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April 13, 2017

The Honorable Ajit Pai  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

*via electronic filing*

RE: Draft Order on Reconsideration in Promoting Diversification of Ownership in the  
Broadcasting Services, MB Docket No. 07-294

Dear Mr. Chairman:

Office of Communication, Inc. of the United Church of Christ, Prometheus Radio Project, Media Mobilizing Project, National Hispanic Media Coalition, Common Cause, and Free Press (UCC, et al.) are writing to oppose adoption of the draft order on reconsideration released on March 30, 2017, to be voted on at the Commission meeting on April 20. Adopting this order would represent a step backwards from long-standing efforts of the Commission and civil rights organizations to increase the diversity of broadcast station ownership.

The draft order on reconsideration would eliminate the requirement that noncommercial stations file ownership reports with race and gender data. Noncommercial educational broadcast licensees (NCEs) are an important source of news, informational, and other programming. Nearly 38% of FM stations and 22% of TV stations are noncommercial. *Broadcast Station Totals as of March 31, 2017* (rel. Apr. 11, 2017).

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As far back as 1998, the Commission has understood that incomplete or inaccurate ownership data hinders attempts to remedy the dearth of broadcast station ownership by people of color and women. At that time, the Commission began requiring commercial broadcast stations to provide the race, ethnicity and gender of attributed owners through Form 323 Biennial Ownership Reports. This data was intended to “(1) allow the Commission to determine accurately the current state of minority and female ownership of broadcast facilities, (2) determine the need for measures designed to promote ownership by minorities and women, (3) chart the success of any such measures that we may adopt, and (4) fulfill our statutory mandate under Section 257 of the Telecommunications Act of 1996 (‘1996 Telecom Act’) and Section 309(j) of the Communications Act of 1934 (‘the Act’) to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry.” *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules and Processes*, Report and Order, 13 FCC Rcd 23056, 23095 (1998).

In the 2006 Quadrennial Review, the authors of studies used by the Commission to assess minority and women’s ownership, as well as many commenting parties, identified significant problems with the Commission’s ownership data. Consequently, the Commission proposed to revise the data collection process. *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5955 (2008) (“Third Further Notice”).

In May 2009, the Commission made significant changes to the Form 323 process in order to obtain an accurate, reliable and comprehensive assessment of minority and female broadcast ownership. *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking, 24 FCC Rcd 5896, 5897 (2009) (“Fourth Further Notice”). Among other things, it required each attributed owner of a commercial station to file Form 323 using a unique identification number known as a FCC Registration Number, or FRN. To obtain an FRN, applicants must provide their social security number (SSN) to the FCC, but the SSNs are not made public and are protected by the Privacy Act. The Form 323s must be filed every two years and must include the gender, ethnicity, and race of any attributed individuals.

The revised Form 323s were due to be filed electronically in late 2009, but were delayed after some commercial broadcasters reported difficulties in obtaining FRNs from some attributed owners. Public Notice, DA 09-2539, MB Docket No. 07-294, et al. (rel. Dec. 4, 2009). Thus, the Media Bureau decided to allow licensees to use, on an interim basis, an alternative method, known as a Special Use FRN, or SUFRN, that did not require an SSN. The Bureau intended that these forms would only be used by licensees who had made good faith efforts but were unable to obtain FRNs from attributed owners. The Bureau directed licensees that a single SUFRN could be used by only one individual and that an individual could not use more than one SUFRN.

In the 2009 Fourth Further Notice, the Commission also sought comment on its tentative conclusion to modify Form 323-E to obtain gender, race and ethnicity data for NCE stations. *Id.* at 5910. The Commission explained that “data from the entire universe of NCE stations are necessary to provide a comprehensive picture of broadcast ownership, including ownership by

women and minorities in the broadcast industry,” and that both the researchers and the Government Accountability Office supported collection of this information.<sup>1</sup>

Unfortunately, the Commission waited more than eight years to finalize this tentative conclusion. Finally, in January 2016, it modified Form 323-E to require that NCEs include the race and gender of attributed owners in the same manner as commercial stations. NCEs comprise approximately 20% of all broadcast licenses. The Commission fully considered objections by some NCEs concerned that this would be too burdensome. It noted that the officers and directors of NCE stations already are defined as attributable interest holders and are reported on Form 323-E. It found that the “additional requirements we impose here — including requiring race, gender, and ethnicity information, and a CORES FRN or RUFRN — do not involve crafting or imposing a new legal definition of ‘ownership’ with respect to NCE stations.” *Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order, Second Report and Order, and Order on Reconsideration, 31 FCC Rcd 398, 422 (2016) (“Form 323 and 323-E Order”).

In response to NCE’s arguments that their board members are often governmental officials, governmental appointees, individuals elected by station members, or volunteers rather than actual owners, the Commission explained that its “attribution standards depend not on the manner in which an individual came to be a member of a station’s board of directors or other governing body, but rather on the ability to influence station programming or operations that his or her membership confers.” *Id.* at 424. Moreover, an officer or director whose duties were *wholly unrelated* to the operation of the broadcast station, would be exempt from attribution. *Id.*

The Commission considered and rejected NCE’s arguments that having to obtain FRNs or RUFRNs would make it harder for NCEs to get members to serve on the board. It observed that:

the process for obtaining a CORES FRN or RUFRN is quite simple and will only need to be done once. While we recognize that the first time they file the new Form 323-E, NCE filers may require additional time and effort to coordinate with attributable interest holders, we find that the lead time between now and the 2017 filing window should be sufficient. We are not persuaded that the requirement will significantly inhibit individuals from serving on the boards of NCEs.

*Id.* at 427.

Nonetheless, some NCEs sought reconsideration of this decision, largely repeating their claims that obtaining an FRN or RUFRN would deter prospective board members. These arguments, however, are speculative, since NCEs have not yet had to file the amended Form 323-Es, and will not do so until December 2017. Moreover, this speculation appears to be based

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<sup>1</sup> *Id.*, referring to *Media Ownership: Economic Factors Influence the Number of Media Outlets in Local Markets, While Ownership by Minorities and Women Appears Limited and Is Difficult to Assess*, Report to the Chairman of the Subcommittee on Telecommunications and the Internet, Energy and Commerce Committee, House of Representatives, GAO-08-383 (Mar. 2008).

on concern that government databases are insecure and that submitting one's SSN (or some combination of information that could allow someone to predict one's SSN) creates a risk of identity theft. The FCC rejected these arguments in its January 2016 Order, and it proposes to do so again in the draft order on reconsideration.<sup>2</sup>

In the same January 2016 order, the Commission addressed a problem created by the use of the Special Use FCC Registration Number (SUFRN) by commercial stations. By that time, commercial stations had filed Form 323s for 2009, 2011, and 2013. Based upon its experience during these three filing cycles, the Commission discovered that a large number of licensees had filed ownership reports using a SUFRN. Moreover, the Commission found that

some SUFRNs have been used in conjunction with multiple individuals, and on the other hand individuals have used multiple SUFRNs. Because the Commission currently cannot determine whether two SUFRNs identify one or more individuals, it cannot reliably examine the complete attributable holdings of an individual reported with an SUFRN (either at a specific time or over time), or search, aggregate, and cross reference the ownership data.

*Id.* at 413. Thus, the Commission concluded that commercial stations' use of Special Use FRNs "undermine[d] the Commission's ability to electronically process ownership data and ma[d]e it difficult for the Commission and outside analysts to evaluate the data." *Id.* at 430. To limit the use of SUFRNs, the Commission created a new type of number, a Restricted Use FRN. The RUFRN accommodates privacy concerns by only requiring the last four digits of the filer's SSN. 31 FCC Rcd at 450.

Later in 2016, the Commission concluded the 2010 and 2014 Quadrennial Reviews. In that order, the Commission pointed to its January 2016 Order as evidence of its efforts to improve the reliability and completeness of the Form 323 data. Specifically, it explained that it had:

eliminated the availability of the interim Special Use FRN for individuals reported on broadcast ownership reports, except in certain limited circumstances. Because the Special Use FRN offers no way for the Commission to identify individuals reliably, restricting its use will improve the integrity and utility of the Commission's broadcast ownership data.

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<sup>2</sup> *Promoting Diversification of Ownership in the Broadcasting Services*, Draft Order on Reconsideration, ¶ 8. The Draft Order reaffirms its commitment to protecting the privacy and security of personally identifiable information that the Commission collects. *Id.* If such problems are found to exist, they should be addressed directly. Exempting only noncommercial stations from the requirement of using an FRN or RUFRN will not solve the problem, and it may encourage commercial broadcasters to seek the same relief.

*Promoting Diversification of Ownership in the Broadcasting Services*, Second Report and Order, 31 FCC Rcd 9864, 9973 (2016). The FCC also touted its decision to require NCE licensees to file the same information as their commercial counterparts. *Id.*

Allowing NCEs to use Special Use FRNs as proposed in the draft order on reconsideration would result in the same problems that caused the Commission to limit the use of SUFRNs in the first place. The change would render ownership data from a large and important segment of the media landscape incomplete and useless. The draft order on reconsideration acknowledges that the “use of unique identifiers improves the integrity and usability of the Commission’s broadcast ownership data.” *Promoting Diversification of Ownership in the Broadcasting Services*, Draft Order on Reconsideration, ¶10. Yet, it arbitrarily concludes that “the potential chilling effect on participation in NCE station governance, and the potentially deleterious effect that loss of NCE leaders could have on the noncommercial broadcast service to the public, outweigh this benefit in the NCE context.” *Id.*

In sum, while UCC, et al. do not support imposing *unnecessary* reporting requirements on NCEs, this information about ethnicity, race and gender is essential for the Commission to assess ownership diversity in broadcasting. For these reasons, we urge the Commission not to adopt the draft order on reconsideration.

We also note that the Commission has had Form 323 information from commercial stations since December 2015. However, it has not publically released any compilation or analysis of this data. We urge the Commission to avoid further delay, and to analyze this data and make it available in a form that is useful to assessing ownership diversity in broadcasting.

Sincerely,

/s/ Angela J. Campbell

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